

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,
Plaintiff,
v.
MICHAEL L. MONTALVO,
Defendant.

NO. CIV. 97-2015 WBS GGH
NO. CR. 89-062 WBS GGH

ORDER

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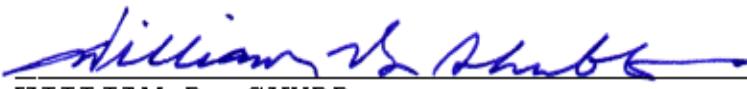
Pursuant to Federal Rule of Civil Procedure 60(b),
Montalvo moves for reconsideration of this court's Order of
November 17, 2008, denying his motion for relief from final
judgment.

"Reconsideration is appropriate if the district court
(1) is presented with newly discovered evidence, (2) committed
clear error or the initial decision was manifestly unjust, or (3)
if there is an intervening change in controlling law." Sch.
Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255,
1262 (9th Cir. 1993).

1 Montalvo does not present newly discovered evidence or
2 assert that there has been an intervening change in controlling
3 law. Rather, he contends that the court committed clear error by
4 not applying certain exceptions to the mandate rule and the law
5 of the case doctrine. However, the court decided defendant's
6 motion in the first instance, not on remand; therefore, the court
7 had no occasion to apply the mandate rule or the law of the case
8 doctrine, let alone their exceptions. See Vizcaino v. U.S. Dist.
9 Court for W. Dist. of Wash., 173 F.3d 713, 719 (9th Cir. 1999)
10 ("[The] law of the mandate, also called law of the case, embodies
11 the principle that on remand 'litigants should not be permitted
12 to relitigate issues that they have already had a fair
13 opportunity to contest.'" (quoting Cowgill v. Raymark Indus., Inc.,
14 832 F.2d 798, 802 (3d Cir. 1987) (emphasis added)).
15 Accordingly, defendant's argument is without merit.

16 IT IS THEREFORE ORDERED that defendant's motion for
17 reconsideration be, and the same hereby is, DENIED.

18 DATED: December 12, 2008

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20 WILLIAM B. SHUBB
21 UNITED STATES DISTRICT JUDGE